

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of
Viacom Television Stations Group of
Dallas/Fort Worth L.P.
Licensee of Station KTXA(TV)
Fort Worth, Texas
Facility I.D. No. 51517
NAL/Acct. No. 0741420039
FRN: 0007187727

NOTICE OF APPARENT
LIABILITY FOR FORFEITURE

Adopted: June 4, 2007

Released: June 6, 2007

By the Chief, Video Division, Media Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture ("NAL") issued pursuant to Section 503(b) of the Communications Act of 1934, as amended (the "Act"), and Section 1.80 of the Commission's Rules (the "Rules"), by the Chief, Video Division, Media Bureau pursuant to authority delegated under Section 0.283 of the Rules, we find that Viacom Television Stations Group of Dallas/Fort Worth L.P. (the "Licensee"), licensee of Station KTXA(TV), Fort Worth, Texas (the "Station"), apparently willfully and repeatedly violated Sections 73.3526(e)(11)(i)-(iii) of the Rules, by failing to place in the Station's public inspection file all required TV issues/programs lists, records concerning its compliance with the children's programming commercial limits, and Children's Television Programming Reports, and Section 73.670 of the Rules, which limits the amount of commercial matter which may be aired by such a station during children's programming. Based upon our review of the facts and circumstances before us, we conclude that the Licensee is apparently liable for a monetary forfeiture in the amount of eighteen thousand dollars (\$18,000).

II. BACKGROUND

2. In the Children's Television Act of 1990, Pub. L. No. 101-437, 104 Stat. 996-1000, codified at 47 U.S.C. §§ 303a, 303b and 394, Congress directed the Commission to adopt rules, inter alia, limiting the number of minutes of commercial matter that television stations may air during children's programming, and to consider in its review of television license renewal applications the extent to which the licensee has complied with such commercial limits. Pursuant to this statutory mandate, the Commission adopted Section 73.670 of the Rules, which limits the amount of commercial matter which may be aired during children's programming to 10.5 minutes per hour on weekends and 12 minutes per hour on weekdays. The Commission also stated that a program associated with a product, in which commercials for that product are aired, would cause the entire program to be counted as commercial time

1 47 U.S.C. § 503(b); 47 C.F.R. § 1.80.
2 See 47 C.F.R. § 0.283.
3 See 47 C.F.R. §§ 73.3526(e)(11)(i)-(iii); 73.670.

(a “program-length commercial”).⁴

3. Section 73.3526 of the Rules requires a commercial broadcast licensee to maintain a public inspection file containing specific types of information related to station operations.⁵ Subsection 73.3526(e)(11)(i) provides that a TV issues/programs list is to be placed in a commercial TV broadcast station’s public inspection file each calendar quarter. In addition, pursuant to subsection 73.3526(e)(11)(ii), each commercial television broadcast station is required to place in its public inspection file, on a quarterly basis, records sufficient to allow substantiation of the licensee’s certification, in its renewal application, of its compliance with the children’s television commercial limits imposed by Section 73.670 of the Rules. Moreover, as set forth in subsection 73.3526(e)(11)(iii), each commercial television licensee is required to prepare and place in its public inspection file a Children’s Television Programming Report (FCC Form 398) for each calendar quarter reflecting, *inter alia*, the efforts that it has made during the quarter to serve the educational and informational needs of children. These subsections of Section 73.3526 require licensees to place TV issues/programs lists, records concerning commercial limits and Children’s Television Programming Reports for each quarter in the station’s public inspection file by the tenth day of the succeeding calendar quarter. Where lapses occur in maintaining the public file, neither the negligent acts or omissions of station employees or agents, nor the subsequent remedial actions undertaken by the licensee, excuse or nullify the licensee’s rule violation.⁶

4. On April 3, 2006, the Licensee filed its license renewal application (FCC Form 303-S) for Station KTXA(TV) (the “Application”) (File No. BRCT-20060403CAJ). In response to Section IV, Question 3 of the Application, the Licensee stated that, during the previous license term, it had failed to timely place in its public inspection file all of the documentation required by Section 73.3526 of the Rules. In Exhibit 17, it indicated that, during a recent review of the Station’s public inspection file, it discovered that several documents were missing. Specifically, the Licensee reported that the Station’s Children’s Television Programming Reports for the fourth quarter of 1998, all of 1999, and the fourth quarter of 2002 were missing. Moreover, the Licensee stated that the Station’s TV issues/programs lists for the fourth quarter of 1998 through the third quarter of 1999, and the fourth quarter of 2002 were missing from the public inspection file. In addition, it indicated that its records concerning compliance with the children’s programming commercial limits for the fourth quarter of 1998 and all of 1999 were missing from the public inspection file.

5. In response to Section IV, Question 5 of the Application, the Licensee stated that, during the previous license term, it failed to comply with the limitations on commercial matter in children’s programming specified in Section 73.670 of the Rules. In Exhibit 19, the Licensee indicated that Station KTXA(TV) exceeded the children’s television commercial limits on three occasions. Of those violations, one was five seconds in duration, and two were program-length commercials. The Licensee attributed the violations to human error and inadvertence.

III. DISCUSSION

6. The Licensee’s failure to place in its Station KTXA(TV) public inspection file all of the required documentation constitutes apparent willful and repeated violations of Sections 73.3526(e)(11)(i), 73.3526(e)(11)(ii), and 73.3526(e)(11)(iii) of the Rules. Further, Station KTXA(TV)’s broadcast of

⁴ *Children’s Television Programming*, 6 FCC Rcd 2111, 2118, *recon. granted in part*, 6 FCC Rcd 5093, 5098 (1991).

⁵ See 47 C.F.R. § 73.3526.

⁶ See *Padre Serra Communications, Inc.*, 14 FCC Rcd 9709 (1999) (*citing Gaffney Broadcasting, Inc.*, 23 FCC 2d 912, 913 (1970) and *Eleven Ten Broadcasting Corp.*, 33 FCC 706 (1962)); *Surrey Range Limited Partnership*, 71 RR 2d 882 (FOB 1992).

material that exceeded the children's television commercial limits constitutes an apparent willful and repeated violation of Section 73.670. This *NAL* is issued pursuant to Section 503(b)(1)(B) of the Act. Under that provision, any person who is determined by the Commission to have willfully or repeatedly failed to comply with any provision of the Act or any rule, regulation, or order issued by the Commission shall be liable to the United States for a forfeiture penalty.⁷ Section 312(f)(1) of the Act defines willful as "the conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate" the law.⁸ The legislative history to Section 312(f)(1) of the Act clarifies that this definition of willful applies to both Sections 312 and 503(b) of the Act,⁹ and the Commission has so interpreted the term in the Section 503(b) context.¹⁰ Section 312(f)(2) of the Act provides that "[t]he term 'repeated,' when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day."¹¹

7. Congress was particularly concerned about program-length commercials because young children often have difficulty distinguishing between commercials and programs.¹² Given this congressional concern, the Commission made it clear that program-length commercials, by their very nature, are extremely serious violations of the children's television commercial limits, stating that the program-length commercial policy "directly addresses a fundamental regulatory concern, that children who have difficulty enough distinguishing program content from unrelated commercial matter, not be all the more confused by a show that interweaves program content and commercial matter."¹³ Although the Licensee asserted that the commercial overages resulted from human error and inadvertence, the Commission has repeatedly rejected human error and inadvertence as a basis for excusing violations of the children's television commercial limits.¹⁴

8. The Commission's *Forfeiture Policy Statement* and Section 1.80(b)(4) of the Rules establish a base forfeiture amount of \$10,000 for public file violations and a base forfeiture amount of \$8,000 for violation of the children's television commercial limits. In determining the appropriate forfeiture amount, we may adjust the base amount upward or downward by considering the factors enumerated in Section 503(b)(2)(D) of the Act, including "the nature, circumstances, extent and gravity of the violation, and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require."¹⁵

9. In this case, the Licensee conceded that several required documents were missing from the public inspection file. The Licensee also acknowledged that the Station exceeded the children's television commercial limits on three occasions, including two program-length commercials. Accordingly, we find that the Licensee is apparently liable for a forfeiture in the amount of \$18,000 for its apparent willful and repeated violations of Sections 73.3526(e)(11)(i)-(iii) and 73.670.

⁷ 47 U.S.C. § 503(b)(1)(B); *see also* 47 C.F.R. § 1.80(a)(1).

⁸ 47 U.S.C. § 312(f)(1).

⁹ *See* H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982).

¹⁰ *See Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991).

¹¹ 47 U.S.C. § 312(f)(2).

¹² S. Rep. No. 227, 101st Cong., 1st Sess. 24 (1989).

¹³ *Children's Television Programming*, 6 FCC Rcd at 2118.

¹⁴ *See, e.g., LeSea Broadcasting Corp. (WHKE(TV))*, 10 FCC Rcd 4977 (MMB 1995); *Buffalo Management Enterprises Corp. (WIVB-TV)*, 10 FCC Rcd 4959 (MMB 1995); *Act III Broadcasting License Corp., (WUTV(TV))*, 10 FCC Rcd 4957 (MMB 1995); *Ramar Communications, Inc. (KJTV(TV))*, 9 FCC Rcd 1831 (MMB 1994).

¹⁵ 47 U.S.C. § 503(b)(2)(D); *see also Forfeiture Policy Statement*, 12 FCC Rcd at 17100-01; 47 C.F.R. § 1.80(b)(4); 47 C.F.R. § 1.80(b)(4), note to paragraph (b)(4), Section II.

IV. ORDERING CLAUSES

10. Accordingly, IT IS ORDERED, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Section 1.80 of the Commission's Rules, that Viacom Television Stations Group of Dallas/Fort Worth L.P. is hereby NOTIFIED of its APPARENT LIABILITY FOR FORFEITURE in the amount of eighteen thousand dollars (\$18,000) for its apparent willful and repeated violations of Sections 73.3526(e)(11)(i)-(iii) and 73.670 of the Commission's Rules.

11. IT IS FURTHER ORDERED, pursuant to Section 1.80 of the Commission's Rules, that, within thirty (30) days of the release date of this *NAL*, Viacom Television Stations Group of Dallas/Fort Worth L.P. SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

12. Payment of the proposed forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the *NAL*/Acct. No. and FRN No. referenced above. Payment by check or money order may be mailed to Federal Communications Commission, at P.O. Box 358340, Pittsburgh, Pennsylvania 15251-8340. Payment by overnight mail may be sent to Mellon Bank/LB 358340, 500 Ross Street, Room 1540670, Pittsburgh, Pennsylvania 15251. Payment by wire transfer may be made to ABA Number 043000261, receiving bank Mellon Bank, and account number 911-6229.

13. The response, if any, must be mailed to Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554, ATTN: Barbara A. Kreisman, Chief, Video Division, Media Bureau, and MUST INCLUDE the *NAL*/Acct. No. referenced above.

14. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the respondent submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the respondent's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

15. Requests for full payment of the forfeiture proposed in this *NAL* under the installment plan should be sent to: Associate Managing Director- Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.¹⁶

16. IT IS FURTHER ORDERED that copies of this *NAL* shall be sent, by First Class and Certified Mail, Return Receipt Requested, to Viacom Television Stations Group of Dallas/Fort Worth L.P., 2000 K Street, N.W., Suite 725, Washington, D.C. 20006, and to its counsel, Howard F. Jaeckel, Esquire, CBS Law Department, 1515 Broadway, 49th Floor, New York, NY 10036.

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman
Chief, Video Division
Media Bureau

¹⁶ See 47 C.F.R. § 1.1914.